

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

KATHLEEN SCHWEER, individually
and on behalf of all others similarly
situated,

Plaintiff,

VS.

Case No. 5:24-cv-01323-JD

ELEVATE HEALTH LLC,

Defendant.

**DEFENDANT ELEVATE HEALTH LLC’S UNOPPOSED MOTION FOR LEAVE
TO JOIN ACQUITY, LLC AS A THIRD-PARTY DEFENDANT BY WAY OF
THIRD-PARTY COMPLAINT**

Defendant Elevate Health LLC (“Elevate”), pursuant to Federal Rules of Civil Procedure 14(a)(1) and 20(A)(2), hereby requests leave to join Acquity, LLC (“Acquity”) as an additional party by way of filing a third-party complaint, asserting claims for breach of contract and indemnity and/or contribution. In support of this motion, Elevate offers the Court the following:

1. Plaintiff Kathleen Schweer (“Plaintiff”) filed suit against Elevate on December 18, 2024, by way of her Complaint [Doc. 1].
2. Elevate filed its Answer and Affirmative Defenses to Plaintiff’s Complaint on February 10, 2025 [Doc. 15].
3. This motion is timely filed pursuant to the Court’s Order entered on April 28, 2025 [Doc. 29], which extended the deadline for joining additional parties and amended

pleadings set forth in the Specialized Scheduling Order [Doc. 27] by sixty (60) days—to June 30, 2025.

4. Plaintiff’s Complaint alleges that Elevate improperly contacted Plaintiff in violation of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, et seq. Plaintiff also seeks to certify a class of alleged similarly situated individuals. [Doc. 1].

5. Elevate disputes Plaintiff’s allegations in full and, in particular, disputes Plaintiff’s allegations that Elevate placed any outgoing communications to Plaintiff as that is something that Elevate does not do.

6. To the extent that Plaintiff was improperly contacted at all, as alleged, those communications came from third parties that Elevate may have contractual and business relationships with, such as Acquity.

7. Thus, to the extent Plaintiff or other putative class members were contacted in violation of the TCPA, that contact was made by Acquity. And if Acquity has violated the TCPA, it has breached its contractual agreement with Elevate.

8. Now, pursuant to Federal Rule of Civil Procedure 20(A)(2), Elevate files this motion for leave to file a third-party complaint against Acquity.

9. Federal Rule of Civil Procedure 20(A)(2) provides that a defendant may join an additional party to a lawsuit if “any right to relief is asserted against [it] jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences” and “any question of law or fact common to all defendants will arise in the action.”

10. Acquity is an integral part of the transactions and occurrences alleged by Plaintiff in her Complaint. Moreover, Acquity will be subject of questions of law and fact common to all defendants in this lawsuit.

11. Therefore, Elevate respectfully requests the Court grant leave for Elevate to file a third-party complaint to join Acquity to this lawsuit and assert claims for breach of contract and indemnity and/or contribution.

12. Elevate's counsel has conferred with Plaintiff's counsel who has advised that Plaintiff has no objection to this motion.

13. Elevate is submitting a proposed order sustaining this motion contemporaneously herewith for the Court's consideration.

Respectfully submitted,

s/Amy Sherry Fischer

Amy Sherry Fischer-OBA# 16651
FOLIART, HUFF, OTTAWAY & BOTTOM
201 Robert S. Kerr Avenue, 12th Floor
Oklahoma City, Oklahoma 73102
Telephone: (405) 232-4633
Fax: (405) 232-3462
amyfischer@oklahomacounsel.com

**ATTORNEY FOR DEFENDANT
ELEVATE HEALTH LLC**

CERTIFICATE OF SERVICE

[X] I hereby certify that on this 25th day of June, 2025, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Andrew Roman Perrong, Esq.
W.D. Oklahoma #24-217
Perrong Law, LLC
2657 Mount Carmel Avenue
Glenside, Pennsylvania 19038
Telephone: 215-225-5529
Facsimile 888-32-0305
a@perronglaw.com

Attorney for Plaintiff

s/Amy Sherry Fischer